

On February 16, 2018, the Department submitted a position statement asserting that it had not received the Request prior to the filing of this appeal. In support of its position, the Department submitted the statement, made subject to the penalty of perjury, of Joshua Kunkel, the Department's Deputy Open Records Officer. In support of the Department's position, Mr. Kunkel attests that, upon receipt of the appeal, he "conducted a thorough examination of files in the possession, custody and control of the [Department]...[and]...made the determination that the [Department] did not receive the [R]equest underlying this appeal nor did it respond thereto."

Under the RTKL, a statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). Because the Department's Open Records Officer did not receive the Request prior to the filing of this appeal, the appeal is **dismissed as premature**. *See* 65 P.S. § 67.901 (stating that "[t]he time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency"); *see also Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014); *Gilliam v. Allegheny County Police Dep't*, OOR Dkt. AP 2014-1096, 2014 PA O.O.R.D. LEXIS 869 (dismissing an appeal as premature where an agency provided evidence that it did not receive a request prior to an appeal being filed).

For the foregoing reasons, the Department is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to Section 1303 of the RTKL. However, as the quasi-judicial

tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.¹ This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: March 12, 2018

/s/ Kelly C. Isenberg

KELLY C ISENERG, ESQ.
APPEALS OFFICER

Sent to: William Keogh (via e-mail only);
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¹ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).